

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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**ROBERT WADE,**

**Plaintiff,**

**v.**

**BERNARD F. BRADY,  
THOMAS F. REILLY, and  
TIMOTHY J. CRUZ**

**Defendants.**

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**Civil Action No. 04-12135-NG**

**MOTION TO DISMISS BY DEFENDANTS REILLY AND CRUZ**

Thomas F. Reilly, the Massachusetts Attorney General and Timothy J. Cruz, the Plymouth District Attorney (the “defendants”), move this Honorable Court to dismiss plaintiff Robert Wade’s 42 U.S.C. § 1983 complaint with respect to them on the grounds that (1) it is not cognizable in § 1983 because it necessarily implies the invalidity of plaintiff’s underlying state convictions, *see Heck v. Humphrey*, 512 U.S. 477 (1994); *see also Harvey v. Horan*, 278 F. 3d 370, 374 (4th Cir. 2002); (2) it is time- barred under the applicable statute of limitations, *see G. L.c. 260, § 2A*; (3) it fails to state a claim upon which relief can be granted; and (4) a *Brady* claim should not be brought in a § 1983 action. *See Harvey v. Horan*, 278 F.3d at 378-379. The defendants have attached a memorandum of law in further support of their motion.

WHEREFORE, for the foregoing reasons, the defendants Reilly and Cruz request that this Court dismiss this action in its entirety pursuant to Fed. R. Civ. P. 12(b)(6).

Respectfully submitted,

THOMAS F. REILLY  
Attorney General

/s/ Eva M. Badway  
Eva M. Badway  
Assistant Attorney General  
Criminal Bureau  
One Ashburton Place  
Boston, Massachusetts 02108  
(617) 727-2200, ext. 2824  
BBO # 635431

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